

Message Text

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TO AMEMBASSY MEXICO

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E.O. 11652: N/A

TAGS: AFSP, CGEN, OGEN, MX

SUBJECT: RECIPROCAL EXEMPTION FROM FEDERAL GASOLINE TAXES
IN MEXICO AND US.

REF: MEXICO 604, 890

1. DIPLOMATIC OFFICERS AND EMPLOYEES OF EMBASSY WHO ARE MEXICAN NATIONALS AND NOT IMMIGRANTS ARE EXEMPT FROM FEDERAL GASOLINE TAX (FOUR CENTS A GALLON). DIPLOMATS BUT NOT EMPLOYEES ARE EXEMPT FROM EIGHT CENT PER GALLON D.C. GASOLINE TAX. MARYLAND AND VIRGINIA DO NOT ACCORD EXEMPTION FROM THEIR GASOLINE TAXES.
2. CONSULAR AND OTHER OFFICIAL MEXICAN GOVERNMENT PERSONNEL ARE NOT EXEMPT FROM FEDERAL GASOLINE TAX, BUT ENJOY EXEMPTION FROM NEW YORK AND CALIFORNIA STATE GASOLINE TAXES. DEPARTMENT NOT AWARE OF EXEMPTIONS ACCORDED BY OTHER STATES.

3. MEXICAN GOVERNMENT HAS BEEN INFORMED REPEATEDLY THAT THIS GOVERNMENT HOLDS THE POSITION THAT ARTICLE III OF THE 1942 CONSULAR CONVENTION BETWEEN THE UNITED STATES AND MEXICO PROVIDES EXEMPTION ONLY TO TAXES THE LEGAL INCIDENCE OF WHICH WOULD OTHERWISE FALL UPON THE OFFICER OR EMPLOYEE.

THE SPECIFIC MATTER OF FEDERAL EXCISE TAX EXEMPTION UNDER ARTICLE III OF THE CONVENTION WAS PRESENTED TO THE TREASURY

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DEPARTMENT IN 1943 AND AGAIN IN 1954. THAT DEPARTMENT HAS

CONSISTENTLY HELD THAT EXEMPTION DOES NOT APPLY TO EXCISE TAXES THE LEGAL INCIDENCE OF WHICH DOES NOT FALL UPON THE OFFICER OR EMPLOYEE EVEN THOUGH THE BURDEN OF THE TAX MAY

BE PASSED ON TO THEM AS PART OF THE PRICE CHARGED FOR THE PRODUCT.

4. ALTHOUGH ARTICLE 49 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS PROVIDES EXEMPTION FROM CERTAIN TAXES NOT PREVIOUSLY COVERED, THE FEDERAL GASOLINE TAX FALLS WITHIN THE LISTED EXCEPTION TO EXEMPTION - "INDIRECT TAXES OF A KIND WHICH ARE NORMALLY INCORPORATED IN THE PRICE OF GOODS OR SERVICES". WHILE THE DEPARTMENT REALIZES THAT THE INABILITY TO ACCORD EXEMPTION HERE WILL NO DOUBT RESULT IN DENIAL OF EXEMPTION FOR OUR PERSONNEL, THERE IS NO AUTHORITY ON WHICH A CLAIM FOR EXEMPTION MAY BE BASED, AND THE DEPARTMENT DOES NOT THEREFORE PLAN TO APPROACH TREASURY REGARDING EXEMPTION. KISSINGER

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